

The 1st October, 1982

No. 9(1)82-PV-6Lab-9165.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Polymar Papers Ltd., 12/6, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT  
HARYANA, FARIDABAD

Reference No. 554 of 1980

between

SHRI NAUMI PARSHAD, WORKMAN AND THE MANAGEMENT OF M/S POLYMAR PAPERS  
LIMITED 12/6, MATHURA ROAD, FARIDABAD

Present :—

Shri M.K. Bhandari, for the applicant.

Shri R. D. Jain, for the management.

#### AWARD

This reference No. 554 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. 1D/FD/223-80/60065, dated 15th December, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Naumi Parshad, workman and the respondent management of M/s Polymar Papers Ltd., 12/6, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Naumi Parshad was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to his demand notice is that he joined the respondent factory on 11th January, 1979 as helper and was drawing Rs. 250/- per month. The workman went on long leave on 14th July, 1980 to 13th August, 1980 and when he came on duty on 14th August, 1980 he was taken on duty and worked upto 1.00 p. m. but after that he was turned out from the factory without any reason. The workman went at the factory gate from 16th August, 1980 to 18th August, 1980 but he was not allowed to enter in the factory. On 19th August, 1980 the workman complained to the Labour Inspector and he advised to give the demand notice. The workman was terminated without any reason and enquiry and he is entitled for his reinstatement with continuity of service and back wages.

The case of the respondent according to written statement is that the reference is illegal because the same has not been referred as per the requirement of the Industrial Disputes Act. This is not a case of termination of service by the respondent but a case of abandonment of employment by the workman which does not fall within the ambit of section 2(a) of the Industrial Disputes Act. The workman as casual employee and not completed one year of service. The workman started absenting in unauthorised manner from 14th July, 1980 and did not reported even on duty from 14th August, 1980 to 28th August, 1980. The workman never applied for any leave nor any leave was sanctioned to him. The management never sanctioned such long leave to its employees. The respondent received a notice from the Labour Inspector on 21st August, 1980. The management's representative attended the office of the Labour Inspector on 26th August, 1980 and all the facts were explained and the worker was advised by the Labour Inspector that he has no case. So the workman is not entitled for any relief. So the reference be dismissed.

On the pleadings of the parties, the following issues were framed :—

- (1) whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (2) Relief ?

My findings on issues is as under :—

Issue No. 1.—The representative of the respondent argued on this issue that the workman was in the employment of respondent as Helper. He started absenting himself in unauthorised manner on 14th July, 1980 to 13th August, 1980 and did not report for duty as alleged by the workman from 14th August, 1980. The respondent sent letter Ex.MW-1/1, dated 17th July, 1980 under U.P.C. which is Ex. MW-1/2 as stated by the respondent witness Shri Harnam Datt Tripathi as MW-1. After the absence of the workman. The workman was

again sent a letter under U.P.C. on 2nd July, 1980 which is MW-1/3. U.P.C. receipt MW-1/4. The letter were sent to the workman on his home address and address at Faridabad but received no reply. The workman did not take any leave from the respondent and the allegation of the workman that he received a telegram from his house about the illness of his mother is wrong as he has not submitted any telegramme in the court to prove this fact. He absented himself from duty without any leave from 14th July, 1980 to 13th August, 1980 and the respondent management waited upto 28th August, 1980 and after sending the letter through U.P.C. and received no reply of these letters struck off the name of the workman after a long absence so the workman abandoned his services of his own. The workman made a complaint to the Labour Inspector and the respondent received the notice from the Labour Inspector on 21st August, 1980. On this notice the representative of the respondent attended the office of Labour Inspector on 26th August, 1980 and explained all the facts to him. He advised the workman that he has no case and filed the complaint of the workman. He further argued that the statement of MW-1 was corroborated by Shri Ram Chander, Assistant Manager of the respondent company as MW-2. He has stated in his statement that the workman was informed through two letters that he was continuously absenting from duty in un-authorised manner and inspite of these letters he did not come and join his duty within stipulated period. He started absenting from 14th July, 1980 and thereafter never comes of his duty and the respondent strick the name of the workman from the roll because he had abandoned his employment. He further stated that the workman never came on duty on 14th August, 1980 and inspite of the abandoning the employment. The respondent was willing to pay him one month notice pay and retrenchment compensation but the case was declined by the workman. He further argued that the workman after the complaint to the Labour Inspector gave the demand notice which came to the respondent through the union. The respondent replied the demand notice to the union,—vide his registered letter dated 4th August, 1980 Ex. MW-1/5 denying all the facts of the demand notice. The respondent also sent the letter to the Labour Officer-cum-Conciliation Officer in respect of the demand notice of the workman which are Ex. MW-1/6 and Ex. MW-1/9. After Conciliation proceedings which is Ex. MW-3/1 the case was rejected by the Labour-Cum-Conciliation Officer with his report which is Ex. M-3/2. The respondent called the clerk of the Conciliation Officer and Shri Randhir Singh, Clerk came as MW-3 to depose before this court. He brought the summoned record as he has stated as MW-3 and produced Ex. MW-2/1 and MW-3/2 as true copy of the conciliation proceedings. The Conciliation Officer with his report Ex. MW-3/2 rejected the demand notice as stated by the witness MW-3 because the workman could not satisfy the conciliation officer with any record about his leave. He further argued that the statement of the workman as W.W.1 cannot be believed because he has stated in his statement that on 11th July, 1980 he received a telegramme from his home about the illness of his mother. He has stated in his statement that on 12th July, 1980 he showed the telegramme to Shri B.P. Singh and give leave application from 14th July, 1980 to 13th August, 1980 and also requested for advance of Rs. 300 which Shri B.P. Singh gave from his own pocket as Rs. 200 as advance and asked the workman that he will sanction his leave. The respondent has produced Shri B.P. Singh, Manager who has denied all the alligations and stated that the workman never came to him with application of leave and telegramme and he did not sanction any leave as he has no authority to sanction the leave. He has further stated that he never gave any assurance to the workman for sanctioning of leave and directed the workman to proceed on leave. He further stated in his statement that the workman never came to him on 14th August, 1980 for duty. The representative of the respondent argued that the representative of the workman could not rebut the witness through his cross examination. He further argued that the allegation of the workman which was supported by his co-workman Shri Ram Bachan as WW-2 and Shri Hari Chand as WW-3 cannot prove the case of the workman as these workmen are the terminated employees of the respondent and gave the statement in favour of the workman to harm the respondent. More over the workman has admitted the address as correct given on the letters Ex. MW-1/1 and MW1/3. When these letters were sent to the workman on a correct address asking the workman that he is absenting from duty in un-authorised manner without informing the respondent and join the duty with in three days on the receipt of this letter. The workman did not join the duty after receiving these letters through the workman has denied the letter but it is fact that the workman was sent the letter by the respondent and even after these letter the workman did not come to join his duties. There is no fault of the respondent in striking off the name of the workman after a long absence without any reason. The workman should have replied the letters sent to him at his home address and address at Faridabad which he has failed. The workman should have proved the telegramme if any in the court which he has stated in his statement that he does not know whether it is here in Faridabad or it is at home or whether it is traceable or not. The workman given the oral evidence in the court without calling any record of the repondent to prove his case. He could prove his case by calling the respondent record of leave and attendance register but he failed to prove his case and so he was not terminated and he abandoned his services of his own by absenting himself for a long time from duty of the factory.

The representative of the workman argued that the workman was a permanent employee of the factory who joined the services on 11th January, 1981 as helper and was receiving Rs. 250 per month. He received a telegramme of his mother's serious illness as he has stated in his statement as WW-1 on 12th July, 1980, he produced the telegramme before Shri B.P. Singh, Plant Manager in the lunch time with an application from 14th July, 1980 to 13th August, 1980 who sanctioned the leave of the workman. The workman also demanded the advance of Rs. 300 which Shri B.P. Singh gave from his pocket Rs. 200 and assured the workman that he will adjust the same of his own. Shri B.P. Singh was married in the same village which the workman belong so the workman knew him in that respect and requested for the leave and advance. Although Shri B.P. Singh denied the relationship as MW-4 but it was the fact that the workman went on leave on his assurance but he

could not tell this fact before this Court because he was employee of the respondent and could not depose against the respondent. The workman came from leave on 14th August, 1980 and joined his duties and worked upto 1.00 p.m. but he was turned out of the factory after 1.00 P.M. without any reasons. As 15th August was the holiday the workman went for duty from 16th August, 1980 to 18th August, 1980 but the respondent refused to give him the duties. Then he made a complaint to the Labour Inspector on 19th August, 1980. after waiting for the respondent reply which is a fact which was admitted by the respondent in their written statement that they attended the Labour Inspector's office in respect of this complaint. If there was no such thing in the mind of the workman he would not have made complaint to the Labour Inspector. The Labour Inspector asked the workman to raise the demand notice as there was no settlement before him. The fact of the leave and the advance of Rs. 200 was corroborated by the witnesses of the workman as WW-2 and WW-3. He further argued that Shri B.P. Singh Plant Manager as admitted the suggestion that he is married in Gazipur District though he has denied the fact that he know the workman through that relation but it is a fact that the workman knew Shri B.P. Singh, Plant Manager from the village relation and he showed the telegramme to him and gave the leave application to him and took Rs. 200 from his pocket as advance and has went home as his mother was seriously ill and after hearing this he could not wait for a long, so on the assurance of Shri B.P. Singh he went home to see his mother who was seriously ill. This fact was stated by two co-workmen of the claimant. The workman could produce only such evidence because it was not in writing. If Shri B.P. Singh deposed falsely in the court because he is employee of the respondent and cannot tell the truth in fear of his own service. The workman is a illiterate person and knows nothing about the implications of the law. Though he has no documentary evidence in his favour because he gave the application which was with the respondent which can not be produced by the workman and the respondent has concealed this fact to remove the workman from the factory. He further argued that the respondent has sent the UPC letter to the workman which are forged one. No such letter was received by the workman as he has denied in his statement. The respondent should have given the registered letter to prove this fact which can be authenticated. The UPC can be got prepared by the respondent. It is not authenticated proof that the respondent sent the letter to the workman on his address. If the workman had received these letters would have certainly replied the same as he has not received any such letter so the workman is not a fault. He further argued that the respondent has not produced the leave record of the worker to prove this fact that he gave no application for leave and attendance register to show that he was marked absent from the date of his absence. The workman was marked leave in the attendance register so it was not produced in the court. Had there been absent marked in the attendance register, the respondent surely brought the register to show that he was marked absent during this period and the workman was marked leave in the attendance register. So they did not prove the register and concealed this fact.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman received the telegramme from his home for illness of his mother and he applied for the leave. The statement of the co-workman can not be disbelieved in this regard and it is a case of doubtful nature, and benefit of doubt should be given to the workman as argued by the workman's representative. The respondent has failed to produced the attendance register and also failed to give the date when his name was struck off. It shows the this record goes in favour of the workman so they did not produce the same in the court. The UPC letters as argued by the representative of the workman are no authenticated proof of sending the letters. Moreover the workman was a permanent employee, after completing one year. The respondent should have absolved after the complaint of the Labour Inspector which the respondent admits in their written statement. Shri B.P. Singh, Plant Manager has MW-4 has admitted in his cross examination that he is married Gazipur District which the workman's belongs and it might be that the workman knowing Shri B.P. Singh from there and went there at such a time when he received the telegramme for serious illness of his mother for some help. It is also presumed correct that Shri B.P. Singh might have assured the workman for leave and given advance. There is force in the arguments of the workman's representative and I agree to it. So the termination of service of the workman was not justified by the respondent and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

The 18th August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No. 1934, dated the 1st September, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,  
Labour Court, Haryana,  
Faridabad.